In The
Supreme Court of the United States

JONATHAN JOSEPH MATHIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

J. Falkner Wilkes
Counsel of Record
ATTORNEY AT LAW
638 East Washington Street
Greenville, South Carolina 29601
(864) 282-1292 (Telephone)
(864) 271-6035 (Facsimile)
jfalknerwilkes@bellsouth.net

Counsel for Petitioner

THE LEX GROUP^{DC} • 1750 K Street, NW • Suite 475 • Washington, DC 20006
(202) 955-0001 • (800) 815-3791 • Fax: (202) 955-0022 • www.thelexgroup.com

Question Presented for Review

Did the lower courts err in denying the Petitioner an evidentiary hearing based on § 2255 claim that his plea was not knowing and intelligently entered?

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Statement of Jurisdiction

The Fourth Circuit Court of Appeals entered its judgment on November 19, 2008. This Court has jurisdiction pursuant to 28 U.S.C. § 2255.

Constitutional Provisions, Statutes Involved

Amendment V. Criminal actions — Provisions concerning — Due process of law and just compensation.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

18 U.S.C. § 4241. Determination of mental competency to stand trial [fn1] to undergo postrelease proceedings.

[fn1] So in original. Probably should be "stand trial or to undergo postrelease proceedings".

> (a) Motion To Determine Competency of Defendant. — At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or

shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or Psychological Examination and Report. — Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing. — The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and Disposition. — If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility —

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial

probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until —

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) Discharge. — When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for

the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) Admissibility of Finding of Competency. — A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub.L. 98-473, title II, Sec. 403(a), Oct. 12, 1984, 98 Stat. 2057; Pub.L. 109-248, title III, Sec. 302(2), July 27, 2006, 120 Stat. 619.)

28 U.S.C. § 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that

the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain —

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, Sec. 114, 63 Stat. 105; Pub.L. 104-132, title I, Sec. 105, Apr. 24, 996, 110 Stat. 1220; Pub.L. 110-177, title V, Sec. 511, Jan. 7, 2008, 121 Stat. 2545.)

(§ 2255) RULE 4. PRELIMINARY REVIEW

(a) Referral to a Judge. The clerk must promptly forward the motion to the judge who

conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court's assignment procedure.

(b) Initial Consideration by the Judge. The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

(As amended Apr. 26, 2004, eff. Dec. 1, 2004.)

Statement of the Case

Jonathan Joseph Mathis, petitions for review of the summary dismissal of his 28 U.S.C. § 2255 claim that his plea was not knowingly, intelligently, freely and voluntarily entered.

On March 9, 2007, Petitioner Mathis plead guilty to being a felon in possession of a firearm. Mathis was represented at the plea by David Plowden, Esq. On May 23, 2007, Mathis was sentenced to 200 months' imprisonment. Mathis did not appeal his conviction and sentence. Mathis filed for § 2255 relief on March 7, 2005. The district court summarily dismissed the petition by order on March 13, 2008. Judgment was entered March 14, 2008. On March 27, 2008 the Petitioner mailed a pro se motion to amend/alter judgment under Rule 52(b) FRCvP. The district court denied the Petitioner's motion to alter judgment on March 31, 2008. On May 22, 2008 the Petitioner filed notice of appeal with the circuit court requesting a certificate of appealability. On September 17, 2008, Mathis filed a motion to stay the appeal and for a limited remand to submit evidence in support of his claim to the district court. On November 19, 2008 the circuit court denied Petitioner's motion for a certificate of appealability and dismissed his appeal.

Argument

Petitioner, Jonathan Joseph Mathis, filed a pro se § 2253 petition seeking relief from his plea and sentence for felon in possession of a firearm. Based on his psychiatric conditions and related medications, Mathis alleges his plea was not knowingly and intelligently entered. Despite the allegation of Mathis' incompetence to enter a plea, the District Court summarily dismissed Mathis' petition. Mathis filed a pro se motion to amend judgment which the district court also summarily denied. Mathis then filed a pro se appeal with the circuit court and requested a certificate of appealibility. Subsequently, Mathis moved the circuit court to stay the appeal and grant a limited remand to the district court to allow him an opportunity to obtain and submit additional documentary evidence through the district court. The circuit court denied the motion for a limited remand, denied Mathis' motion for appealibility, and dismissed the appeal. As a result, Mathis was denied an opportunity to present evidence as to his claim of incompetence.

Constitutional due process requires that trial of an accused may be conducted only when he is legally competent. Due process prohibits the conviction of a person who is mentally incompetent. Bishop v. United States, 350 U.S. 961, 76 S. Ct. 440, 100 L. Ed. 835 (1956). The test of incompetency is whether a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the

proceedings against him." Dusky v. United States, 362 U.S. 402, 402, 80 S. Ct. 788, 788, 4 L. Ed. 2d 824 (1960) (citation omitted). Mathis claims that he was incompetent at the time his plea was entered. In his § 2255 petition Mathis alleged that prior to pleading guilty in federal district court that he had been prescribed several heavy anti-psychotic medications due to his earlier diagnosis of paranoid schizephrenia and dissociative identity disorder. As a result of his diagnosis and medications, Mathis claimed that he did not fully understand the nature and consequences of his plea agreement.

The district court's order sets forth relevant portions of the plea colloquy. During the plea proceedings Mathis informed the court that he had suffered from paranoid schizophrenia and disassociative identity disorder, as well as paranoid disorder. During the plea colloquy Mathis informed the court that he was taking "about 16 pills a day." In his § 2255 application Mathis alleged "a long history of mental illness" and that he was "on several heavy anti-psychotic medications and tranquilizers prior to, during, and after" his guilty plea. Mathis alleged that his condition and medications prevented him from fully understanding his actions before the district court.

Mathis sufficiently set forth a legal and factual basis to warrant an evidentiary hearing. His issue as to lack of capacity sufficiently alleges prejudice in that he would not have entered the plea and would have taken the case to trial if his counsel had not permitted him to plead while incompetent. *See* United States v. Seesing, 234 F.3d 456, 462 (9th

Cir. 2000) ("Pro se complaints and motions from prisoners are to be liberally construed."). Mathis' allegation, if true, would establish prejudice. *Cf.* Bouchillon v. Collins, 907 F.2d 589, 595 (5th Cir. 1990) (holding that mentally incompetent petitioner had met prejudice prong of the Strickland test "because if [he] was incompetent his plea was ineffective and he was prejudiced by its entry"). Under Rule 4 of the Rules Governing Section 2255 Proceedings In The United States District Courts, the Court is to consider initially whether the face of the motion itself, together with the annexed exhibits and prior proceedings in the case, reveals the movant is not entitled to relief. Unless it plainly appears the movant is not entitled to relief, an evidentiary hearing is required. Since Mathis' petition sufficiently alleged a basis for relief, summary dismissal was error.

During the plea colloquy trial counsel indicated an awareness of Mathis' condition but indicated that he had no doubt as to Mathis' competence. Based on limited discussion during the plea colloquy the trial judge commented that Mathis appeared to understand what was going on. In later addressing the § 2253 claim, the district court relying only on the foregoing, rejected Mathis' claim of incompetence at the time of the plea and denied an evidentiary hearing. In doing so the district court failed to recognize that demeanor is not always dispositive of the issue of competence. "[T]he existence of even a severe psychiatric defect is not always apparent to laymen." Bruce v. Estelle, 536 F.2d 1051, at 1059 (5th Cir. 1976). In this case, Mathis' severe psychiatric condition and medications

were known to counsel and disclosed during the plea colloquy yet no meaningful inquiry was made as to his condition on the record.

Despite trial counsel's awareness of Mathis' diagnosis and medications there was no indication of any investigation as to competency. Trial counsel instead relied solely on his own limited observations of Mathis. Counsel's failure is unreasonable since Mathis' condition, or its effects, are not necessarily apparent to a layman. *See* Bouchillon v. Collins, 907 F.2d 589, (5th Cir. 1990). Similarly, in light of the disclosure of Mathis' mental illness during the plea colloquy, the district court had sufficient objective evidence that Mathis was suffering from a mental disease or defect. (paranoid schizephrenia and dissociative identity disorder). Mathis' diagnosis combined with the large amount of medication which he was prescribed could be sufficient to render him mentally incompetent to the extent that he was unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. *See* 18 U.S.C. § 4241. Nevertheless, the district court in this case chose not to require a competency hearing, nor make a more detailed inquiry for the record.

The district court's subsequent summary dismissal of the § 2255 claim denied Mathis the opportunity to obtain and offer mental health records in the government's possession which would have established his history of psychiatric disorders and prescribed medication at the time of the plea. An evidentiary hearing was necessary to allow Mathis an opportunity to present additional

evidence relating to his mental condition. Nursing and medical records from the jail during his pretrial detention, as well as testimony of witnesses, are all relevant and necessary to the issue of whether the Petitioner's lacked capacity at the time of the plea. Summary dismissal of Mathis' claim denied him the opportunity to present and establish a full factual basis for relief on his claim. As it does not plainly appear from the record that Mathis' is not entitled to relief if his factual allegations are true, he is entitled to an evidentiary hearing on the issue. As a result, the lower courts erred in the summary dismissal of Mathis' petition for relief under § 2255.

WHEREFORE, Petitioner moves this Court grant certiorari and order that Mathis be granted an evidentiary hearing on his § 2255 petition.

Respectfully submitted,

J. Falkner Wilkes
ATTORNEY AT LAW
638 East Washington Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile
jfalknerwilkes@bellsouth.net
Counsel for the Petitioner

APPENDIX

[FILED 11/19/2008]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6871

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JONATHAN JOSEPH MATHIS,

Defendant – Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., District Judge. (6:06-cr-00815-HMH-1; 6:08-cv-70034-HMH)

Submitted: November 13, 2008 Decided: November 19, 2008

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by published per curiam opinion.

Jeffrey Falkner Wilkes, Greenville, South Carolina, for Appellant. Alan Lance Crick, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jonathan Joseph Mathis seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2000) motion and his motion for reconsideration. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive

procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Mathis has not made the requisite showing. Accordingly, we deny Mathis's motion for a certificate of appealability and dismiss the appeal. We also deny Mathis's motion for limited remand. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

[FILED 3/13/2008]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:06-815-HMH
vs.)	
)	
Jonathan Joseph Mathis,)	
)	
Movant.)	

OPINION AND ORDER

This matter is before the court on Jonathan Joseph Mathis's ("Mathis") motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. After a thorough review of the facts and pertinent law, the court summarily dismisses Mathis's § 2255 motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 9, 2007, Mathis pled guilty to being a felon in possession of a firearm. David Plowden ("Plowden") represented Mathis at plea and sentencing. On May 23, 2007, Mathis was sentenced to 200 months' imprisonment. Mathis did not appeal his conviction and sentence. Mathis filed the instant § 2255 motion on March 7, 2007.[1]

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[1] See Houston v. Lack, 487 U.S. 266 (1988).

In his § 2255 motion, Mathis alleges that Plowden was constitutionally ineffective for (1) failing to obtain a psychological evaluation of Mathis, (2) coercing and threatening Mathis, (3) rushing Mathis into pleading guilty, (4) allowing "the government to renege on my plea agreement," (5) failing to object to the presentence investigation report ("PSR"), (6) failing to investigate the case, (7) failing to prepare a defense, (8) failing to contact any witnesses, and (9) failing to properly interview Mathis before trial. In addition, Mathis alleges that his due process rights were violated because he lacked awareness of what he was doing and the ability to understand the gravity of pleading guilty due to his mental illness. (Id. 5.) The court will address each of Mathis's alleged grounds for relief below.

II. DISCUSSION OF THE LAW

A. Ineffective Assistance of Counsel Claims

In order to successfully challenge a conviction or sentence on the basis of ineffective assistance of counsel, Mathis must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced by his counsel's deficient performance. See Strickland v. Washington, 466 U.S. 668, 687 (1984). With respect to the first prong, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. With respect to the second prong, Mathis must demonstrate a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty

and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Psychological Evaluation

First, Mathis claims that his counsel was ineffective for failing to obtain a psychological evaluation of Mathis. However, this claim is without merit. A defendant is competent to enter a guilty plea if "the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him." Godinez v. Moran, 509 U.S. 389, 396 (1993) (internal quotation marks omitted). The issue is whether the movant has the ability to understand the proceedings, which the Supreme Court has described as "a modest aim." Id. at 402. "Mental illness and legal incompetence are not identical, nor are all mentally ill people legally incompetent." Nachtigall v. Class, 48 F.3d 1076, 1081 (8th Cir. 1995).

During the guilty plea colloquy, the following exchange occurred :

The Court: Have you ever been treated for any type of mental, emotional or psychiatric condition?

The Defendant: Yes, sir.

The Court: And when was that and what was it?

The Defendant: I have paranoid schizophrenia and disassociative identity disorder and paranoid disorder.

The Court: Are you presently being treated for that?

The Defendant: Yes.

The Court: Are you taking medication for that?

The Defendant: Yes, sir, I take about 16 pills a day.

The Court: Mr. Plowden, what do you know about that?

Mr. Plowden: We've talked about it, Your Honor. I have no doubt as to his competence. He's understood everything we've talked about. We have had very in-depth discussions about this case.

The Court: Mr. Mathis, in your opinion, because you certainly appear to be intelligent from my limited discussion with you, and you certainly seem to be – understand what's taking place here, during your discussions with your attorney, do you feel like you have understood everything?

The Defendant: I believe that I understand, yes, sir.

The Court: And your mental situation in your opinion has not interfered with that?

The Defendant: Not that I'm aware of, no, sir.

The Court: Okay. The Court finds that the defendant is competent to proceed and that finding is based upon - - let me first ask you this. Other than the medication which has been prescribed for you to take, are you under the influence of anything else, alcohol, drugs or medicine or anything else?

The Defendant: No, sir, just my prescribed medication.

The Court: The Court finds that the defendant is competent to proceed and that finding is based upon the answers given and the representations made and also from my observation of the defendant standing before me this morning.

(Guilty Plea Tr. 3-5.) Plowden has appeared before this court hundreds of times and is a very experienced federal public defender. Further, the court observed Mathis's demeanor and behavior in the courtroom and noted that he behaved rationally throughout the proceedings. Further, there is no evidence that indicates any medication rendered him incompetent. In addition, a review of the guilty plea transcript reveals that Mathis understood the proceedings and asked questions. Based on the foregoing, Plowden was not constitutionally ineffective for failing to obtain a psychological examination because Mathis was not incompetent to plead guilty. Moreover, Mathis has failed to show any prejudice. Therefore, this claim is without merit.

2. Coercion Claim

Mathis's claim that Plowden coerced and threatened him and rushed him into pleading guilty "is properly construed not as a claim of ineffective assistance of counsel, but rather as a claim that h[is] guilty plea was not knowing, voluntary, and intelligent. As such, it is procedurally defaulted as a result of petitioner's failure to raise it on direct review." Gao v. United States, 375 F. Supp. 2d 456, 465 (E.D. Va. 2005) (citing Bousley v. United States, 523 U.S. 614, 621 (1998) ("[T]he voluntariness and intelligence of a guilty plea can be attacked on collateral review only if first challenged on direct review.")). In addition, under oath during his guilty plea hearing Mathis stated that no one forced, threatened, or coerced him to plead guilty. (Guilty Plea Tr. 10.) Moreover, Mathis stated that he had no complaints of his attorney or anyone else in connection with his case. Further, Mathis has failed to show cause or prejudice from failing to raise this claim on direct appeal. Gao, 375 F. Supp. 2d at 465. As such, this claim is without merit and warrants no further consideration.

3. Lack of Preparation and Investigation Claims

With respect to Mathis's allegations that Plowden was ineffective for failing to investigate the case, to prepare a defense, to contact any witnesses, and to properly interview Mathis before trial, these claims are without merit. Mathis pled guilty. "A voluntary and intelligent plea of guilty is an admission of all the elements of a formal criminal

charge . . . and constitutes an admission of all material facts alleged in the charge." United States v. Willis, 992 F.2d 489, 490 (4th Cir. 1993) (internal quotation marks and citations omitted). "Furthermore, a guilty plea constitutes a waiver of all nonjurisdictional defects . . . including the right to contest the factual merits of the charges." Id. (internal quotation marks and citations omitted).

In addition, Mathis fails to explain how he has been prejudiced by Plowden's alleged failures with respect to the preparation of the case. "[I]f the ineffectiveness alleged was a failure to investigate thoroughly, which in turn caused the defendant to plead guilty, the defendant must show a likelihood that some evidence would have been discovered which would have caused the attorney to change his recommendation to enter into a plea agreement." United States v. Kauffman, 109 F.3d 186, 191 (3d Cir. 1997). Mathis does not explain what further investigation Plowden should have done or what witnesses he should have contacted. In addition, Mathis does not explain how a more detailed interview of him would have aided his defense. Moreover, during the guilty plea colloquy, Mathis stated that he had enough time to discuss his case with Plowden and that he was satisfied with Plowden's representation. (Guilty Plea Tr. 5.) These conclusory allegations fail to show that Plowden acted in an objectively unreasonable manner with respect to his decisions concerning investigating the case, contacting witnesses, and interviewing Mathis, and there is no showing of how any of the unnamed witnesses or alleged errors prejudiced Mathis. As

such, these claims are without merit and warrant no further consideration.

4. Plea Agreement Claim

In addition, Mathis's claim that Plowden was constitutionally ineffective for allowing the government to "renege" on his plea agreement is wholly without merit. Mathis did not have a written plea agreement with the government. Further, during his guilty plea colloquy, the court asked Mathis whether anyone promised him what his actual sentence would be. (Guilty Plea Tr. 10.) Mathis responded "yes, they did." (Id.) The court stated, "I'm not talking about a range of sentence but what your actual sentence would be." (Id.) Mathis responded, "They said . . ., 188 months." (Id. 11.) Plowden stated, "We have discussed the guidelines, . . And I think part of this is the U.S. Attorney is willing to recommend a sentence on the low end of the range." (Id.) The court responded, "I have no problem giving you the low end of the range, but I'm not committing myself to that because I don't know anything about your record or about this. Do you understand that?" (Guilty Plea Tr. 11.) To which Mathis responded, "yes, sir." (Id.)

The court continued, "So I want you to understand that if you are pleading guilty, no one can promise you what your actual sentence would be. Do you understand that?" (Id.) Mathis responded, "Yes, sir." (Id.) The court later asked whether there was a plea agreement in the case. (Id.) The government stated that they were dismissing count 2, had no objection to Mathis receiving a three-point

deduction for acceptance of responsibility, and agreed to recommend the low end of the guideline range. (Guilty Plea Tr. 11-12.) After the government indicated the above, the court asked Mathis "is that your full understanding, Mr. Mathis, as far as any promise made by the Government?" Mathis responded, "as far as I know, yes, sir." (Id. 12). Mathis was sentenced within the guideline range of 180 to 310 months. Based on the foregoing, Plowden was not constitutionally ineffective because the government did not breach any plea agreement with Mathis. Therefore, this claim is without merit.

5. PSR Claim

Mathis alleges that his counsel was ineffective for failing to object to the PSR which "was full of errors and misinformation." (§ 2255 Mot. Attachment 1.) Mathis fails to cite any specific error in the PSR. These conclusory allegations fail to show that Plowden acted in an objectively unreasonable manner in failing to object to the PSR, and there is no showing of how Plowden's failure to object prejudiced Mathis. Therefore, this claim is without merit.

B. Due Process Claim

Finally, Mathis alleges that his due process rights have been violated because the court accepted his guilty plea despite his long history of mental illness and treatment with antipsychotic medication. (§ 2255 Mot. 5.) As set forth above, the court found that Mathis was competent to plead guilty. It is clear from a review of the transcript that Mathis

understood the proceedings and communicated effectively with his lawyer. Therefore, this claim is dismissed.

It is therefore

ORDERED that Mathis's § 2255 motion is summarily dismissed.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
March 13, 2008

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

[FILED: 3/31/2008]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America	)	
	)	Cr. No. 6:06-815-HMH
vs.	)	
	)	
Jonathan Joseph Mathis,	)	**OPINION AND ORDER**
	)	
Movant.	)	

This matter is before the court on Jonathan Joseph Mathis's motion to alter or amend the court's March 7, 2008, order ("March Order") summarily dismissing his 28 U.S.C. § 2255 motion pursuant to Rule 52(b) of the Federal Rules of Civil Procedure. The instant motion was filed March 24, 2008.

Rule 52(b) provides: "[o]n a party's motion filed no later than ten days after entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly." "The purpose of Rule 52(b) is to allow a court to correct manifest errors of law or fact, or in limited circumstances, to present newly discovered evidence, but not to relitigate old issues, to advance new theories, or to secure a rehearing on the merits." Gutierrez v. Ashcroft, 289 F. Supp. 2d 555, 561 (D.N.J. 2003) (internal quotation marks omitted).

In his § 2255 motion, Mathis alleged that his counsel was ineffective for failing to object

to the Presentence Investigation Report ("PSR") which contained numerous errors. The court noted in its March Order that Mathis failed to cite any specific error in the PSR. (March Order 7.) In the instant motion, Mathis outlines the alleged errors in the PSR. However, Mathis has failed to demonstrate that he was prejudiced by his counsel's failure to object to these alleged errors because none of the alleged errors affected the guideline calculations in the PSR. In addition, Mathis alleges that the March Order contained a typographical error on page 6 statingincorrectly that his guideline range was 180 to 310 months, when it should have stated that the guideline range was 180 to 210 months. This typographical error in no way affected this court's decision. Mathis was sentenced within the guideline range to 200 months' imprisonment.

Further, Mathis realleges the remainder of his ineffective assistance of counsel claims and his claim that his due process rights were violated because he was mentally incompetent to plead guilty. Mathis is attempting to relitigate the issues raised in his § 2255 motion. In addition, Mathis has failed to present any newly discovered facts or manifest error. Therefore, Mathis's motion pursuant to Rule 52(b) is denied.

Moreover, to the extent Mathis is moving to alter or amend his judgment under Rule 59(e), this motion is denied. A motion to alter or amend a judgment under Rule 59(e) of the Federal Rules of Civil Procedure may be made on three grounds: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at

trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment. . . ." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Id. (internal citation and quotation marks omitted). Mathis has failed to show that the court must reconsider its decision "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice," or that his circumstances were exceptional. Hutchinson, 994 F.2d at 1081; Pac. Ins. Co., 148 F.3d at 403. Therefore, Mathis's motion is denied.

It is therefore

ORDERED that Mathis's motion to amend, docket number 43, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
March 31, 2008

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of his right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

[FILED: 11/19/2008]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6871
(6:06-cr-00815-HMH-1)
(6:08-cv-70034-HMH)

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JONATHAN JOSEPH MATHIS,

Defendant – Appellant

J U D G M E N T

In accordance with the decision of this Court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK